

## **Discussion Draft Legislation to Re-Write**

### **Real Estate Disclosure/Disclaimer Statute**

#### **§ 55-517. Applicability.**

The provisions of this chapter apply only with respect to transfers by sale, exchange, installment land sales contract, or lease with option to buy residential real property consisting of not less than one nor more than four dwelling units, whether or not the transaction is with the assistance of a licensed real estate broker or salesperson.

#### **§ 55-518. Exemptions.**

A. The following are specifically excluded from the provisions of this chapter:

1. Transfers pursuant to court order including, but not limited to, transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.
2. Transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default; transfers by a trustee under a deed of trust pursuant to a foreclosure sale, or transfers by a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust or has acquired the real property by a deed in lieu of foreclosure.
3. Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
4. Transfers from one or more co-owners solely to one or more other co-owners.
5. Transfers made solely to any combination of a spouse or a person or persons in the lineal line of consanguinity of one or more of the transferors.
6. Transfers between spouses resulting from a decree of divorce or a property settlement stipulation pursuant to the provisions of Title 20.
7. Transfers made by virtue of the record owner's failure to pay any federal, state, or local taxes.
8. Transfers to or from any governmental entity or public or quasi-public housing authority or agency.

9. Transfers involving the first sale of a dwelling; provided, that this exemption shall not apply to the disclosures required by § ~~55-519.1~~.

B. Notwithstanding the provisions of subdivision 9 of this section, the builder of a new dwelling shall disclose in writing to the purchaser thereof all known material defects which would constitute a violation of any applicable building code. In addition, for property that is located wholly or partially in any locality comprising Planning District 15, the builder or owner, if the builder is not the owner of the property, shall disclose in writing whether the builder or owner has any knowledge of (i) whether mining operations have previously been conducted on the property or (ii) the presence of abandoned mines, shafts, or pits, if any. The disclosures required by this subsection shall be made by a builder or owner (i) when selling a completed dwelling, before acceptance of the purchase contract or (ii) when selling a dwelling before or during its construction, after issuance of a certificate of occupancy. Such disclosure shall not abrogate any warranty or any other contractual obligations the builder or owner may have to the purchaser. The disclosure required by this subsection may be made on the disclosure form described in § ~~55-519~~. ~~The builder or owner may not satisfy the requirements of this subsection by the use of the disclaimer statement described in § 55-519.~~ If no defects are known by the builder to exist, no written disclosure is required by this subsection.

§ 55-519. Required disclosures.

A. With regard to transfers described in § ~~55-517~~ of this chapter, the owner of the residential real property shall furnish to a purchaser ~~one of the following:~~

~~1. Except with respect to the disclosures required by § 55-519.1, a residential property disclosure disclaimer statement in a form provided by the Real Estate Board stating that the owner makes the following no representations or warranties as to the condition of the real property: or any improvements thereon, and that the purchaser will be receiving the real property "as is," that is, with all defects which may exist, if any, except as otherwise provided in the real estate purchase contract; or~~

~~2. A residential property disclosure statement disclosing those items contained in a form provided by the Real Estate Board to implement the provisions of this chapter and to list items which are required to be disclosed relative to the physical condition of the property. Such disclosure form may include defects of which the owner has actual knowledge regarding: (i) the water and sewer systems, including the source of household water, water treatment system, and sprinkler system; (ii) insulation; (iii) structural systems, including roof, walls, floors, foundation, and any basement; (iv) plumbing, electrical, heating and air conditioning systems; (v) wood-destroying insect infestation; (vi) land use matters; (vii) hazardous or regulated materials, including asbestos, lead-based paint, radon, and underground storage tanks or other adverse environmental site conditions; and (viii) other material defects known to the owner. The disclosure form shall contain a notice to prospective purchasers and owners (a) that the prospective purchaser and the owner may wish to obtain professional advice or inspections of the property and (b) that information is available at the Department of Environmental Quality which identifies~~

~~confirmed releases or discharges of oil or other adverse environmental site conditions that may affect the property. The disclosure form shall also contain a notice to purchasers that the information contained in the disclosure is the representations of the owner and is not the representations of the broker or salesperson, if any. The owner shall not be required to undertake or provide any independent investigation or inspection of the property in order to make the disclosures required by this chapter.~~

(i) The owner makes no representations or warranties as to the condition of the real property or any improvements thereon, and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary including obtaining a certified home inspection, as defined in § 54.1-500, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property.

~~(ii) B. The disclosure and disclaimer forms shall contain a notice to purchasers that regardless of whether the owner proceeds under subdivision A 1 or A 2, The owner makes no representations with respect to any matters which may pertain to parcels adjacent to the subject parcel and that -Further, such notice shall advise purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to adjacent parcels in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property.~~

~~(iii) C. The disclosure and disclaimer forms shall contain a notice to purchasers that regardless of whether the owner proceeds under subdivision A 1 or A 2, If parcel property is located in a historic district designated by the locality pursuant to § 15.2-2306 and which the owner has knowledge of such designation, such fact shall be disclosed by the owner. Otherwise, the notice shall advise The owner makes no representations with respect to any matters which pertain to purchasers to exercise whatever due diligence a particular purchaser deems necessary to determine whether the provisions of any historic district ordinance affect the property and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to any historic district designated by the locality pursuant to § 15.2-2306, and that including review of any local ordinance creating such district or any official map adopted by the locality depicting historic districts, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property.~~

~~(iv) D. The disclosure and disclaimer forms shall contain a notice to purchasers that regardless of whether the owner proceeds under subdivision A 1 or A 2, The owner makes no representations with respect to whether the property contains any resource protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) adopted by the locality where the property is located pursuant to § 10.1-2109 and that -Further, such notice shall advise purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary to determine whether the provisions of any such ordinance affect the property, including~~

review of any official map adopted by the locality depicting resource protection areas, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property.

(v) ~~E. The disclosure and disclaimer forms shall contain a notice to purchasers that whether the owner proceeds under subdivision A 1 or A 2, The owner makes no representations with respect to information on any sexual offenders registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2 and that purchasers are advised to should exercise whatever due diligence they deem necessary with respect to such information, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property. on any sexual offenders registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, including how to obtain such information.~~

(vi) ~~F. The disclosure and disclaimer forms shall contain a notice to purchasers that whether the owner proceeds under subdivision 1 or 2 of subsection A, The owner represents that there are no pending enforcement actions pursuant to the Uniform Statewide Building Code (§ 36-97 et seq.) that affect the safe, decent, and sanitary living conditions of the property of which the owner has been notified in writing by the locality.~~

§ 55-519.1. Required disclosures for properties located adjacent to a military air installation.

The owner of residential real property located in the City of Chesapeake or Virginia Beach ~~any locality in~~ shall disclose to the purchaser whether the subject parcel is located in in a noise zone or accident potential zone, or both, as designated by the locality in its official zoning map, which a military air installation is located, or in any adjacent locality, shall furnish to the purchaser on a form provided by the Real Estate Board. ,a written disclosure stating that such property is located in a noise zone or accident potential zone, or both, as designated by the locality in its official zoning map. Such disclosure shall state the specific noise zone or accident potential zone, or both, in which the property is located according to the official zoning map.

§ 55-520. Time for disclosure; cancellation of contract.

A. The owner of residential real property subject to this chapter shall deliver to the purchaser the written disclosure ~~s or disclaimer~~ required by this chapter prior to the acceptance of a real estate purchase contract. For the purposes of this chapter, a "real estate purchase contract" means a contract for the sale, exchange, or lease with option to buy of real estate subject to this chapter, and "acceptance" means the full execution of a real estate purchase contract by all parties. The residential ~~property disclaimer statement or residential property disclosure statement~~ may be included in the real estate purchase contract, in an addendum thereto, or in a separate document.

B. If the disclosure ~~or disclaimer~~ required by this chapter is delivered to the purchaser after the acceptance of the real estate purchase contract, the purchaser's sole remedy shall

be to terminate the real estate purchase contract at or prior to the earliest of (i) three days after delivery of the disclosure ~~or disclaimer~~ in person; or (ii) five days after the postmark if the disclosure ~~or disclaimer~~ is deposited in the United States mail, postage prepaid, and properly addressed to the purchaser; or (iii) settlement upon purchase of the property; or (iv) occupancy of the property by the purchaser; or (v) the execution by the purchaser of a written waiver of the purchaser's right of termination under this chapter contained in a writing separate from the real estate purchase contract; or (vi) the purchaser making written application to a lender for a mortgage loan where such application contains a disclosure that the right of termination shall end upon the application for the mortgage loan. In order to terminate a real estate purchase contract when permitted by this chapter, the purchaser must, within the times required by this chapter, give written notice to the owner either by hand delivery or by United States mail, postage prepaid, and properly addressed to the owner. If the purchaser terminates a real estate purchase contract in compliance with this chapter, the termination shall be without penalty to the purchaser, and any deposit shall be promptly returned to the purchaser. Any rights of the purchaser to terminate the contract provided by this chapter shall end if not exercised prior to the earlier of (i) the making of a written application to a lender for a mortgage loan where the application contains a disclosure that the right of termination shall end upon the application for the mortgage loan or (ii) settlement or occupancy by the purchaser, in the event of a sale, or occupancy, in the event of a lease with option to purchase.

C. Notwithstanding the provisions of subsection B or of subdivision B 2 of § 55-524, no purchaser of residential real property located in a noise zone designated on the official zoning map of the locality as having a day-night average sound level of less than 65 decibels shall have the right to terminate a real estate purchase contract pursuant to this section for failure of the property owner to timely provide any disclosure required by § 55-519.1.

#### § 55-521. Owner liability.

A. Except with respect to the disclosures required by § 55-519.1, the owner shall not be liable for any error, inaccuracy or omission of any information delivered pursuant to this chapter if: (i) the error, inaccuracy or omission was not within the actual knowledge of the owner or was based on information provided by public agencies or by other persons providing information ~~specified in subsection B~~ that is required to be disclosed pursuant to this chapter, or the owner reasonably believed the information to be correct, and (ii) the owner was not grossly negligent in obtaining the information from a third party and transmitting it. The owner shall not be liable for any error, inaccuracy, or omission of any information required to be disclosed by § 55-519.1 if the error, inaccuracy, or omission was the result of information provided by an officer or employee of the locality in which the property is located.

B. The delivery by a public agency or other person, as described in subsection C below, of any information required to be disclosed by this chapter to a prospective purchaser shall be deemed to comply with the requirements of this chapter and shall relieve the owner of any further duty under this chapter with respect to that item of information.

C. The delivery by the owner of a report or opinion prepared by a licensed engineer, land surveyor, geologist, wood-destroying insect control expert, contractor or ~~other~~ home inspection expert, dealing with matters within the scope of the professional's license or expertise, shall satisfy the requirements of ~~subsection A~~ this chapter if the information is provided to the prospective purchaser ~~owner~~ pursuant to a request therefor, whether written or oral. In responding to such a request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of this chapter and, if so, shall indicate the required disclosures, or portions thereof, to which the information being furnished is applicable. Where such a statement is furnished, the expert shall not be responsible for any items of information, or, portions thereof, other than those expressly set forth in the statement.

§ 55-522. Change in circumstances.

If information disclosed in accordance with this chapter is subsequently rendered or discovered to be inaccurate as a result of any act, occurrence, information received, circumstance or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this chapter. However, at or before settlement, the owner shall be required to disclose any material change in the disclosures made relative to physical condition of the property or certify to the purchaser at settlement that the disclosures made relative to condition of the property are is substantially the same as it was when the disclosure form was provided. If, at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the owner, the owner may state that the information is unknown or may use an approximation of the information, provided the approximation is clearly identified as such, is reasonable, is based on the actual knowledge of the owner, and is not used for the purpose of circumventing or evading this chapter.

§ 55-523. Duties of real estate licensees.

A real estate licensee representing an owner of residential real property as the listing broker has a duty to inform each such owner represented by that licensee of the owner's rights and obligations under this chapter. A real estate licensee representing a purchaser of residential real property or, if the purchaser is not represented by a licensee, the real estate licensee representing an owner of residential real estate and dealing with the purchaser has a duty to inform each such purchaser of the purchaser's rights and obligations under this chapter. Provided a real estate licensee performs those duties, the licensee shall have no further duties to the parties to a residential real estate transaction under this chapter, and shall not be liable to any party to a residential real estate transaction for a violation of this chapter or for any failure to disclose any information regarding any real property subject to this chapter.

§ 55-524. Actions under this chapter.

A. Notwithstanding any other provision of this chapter or any other statute or regulation, no cause of action shall arise against an owner or a real estate licensee for failure to

disclose that an occupant of the subject real property, whether or not such real property is subject to this chapter, was afflicted with human immunodeficiency virus (HIV) or that the real property was the site of:

1. An act or occurrence which had no effect on the physical structure of the real property, its physical environment, or the improvements located thereon; or
2. A homicide, felony, or suicide.

B. The purchaser's remedies hereunder for failure of an owner to comply with the provisions of this chapter are as follows:

1. ~~In the event of a misrepresentation in any residential property disclosure statement or failure to deliver a disclosure or disclaimer statement, an action for actual damages suffered as a result of defects existing in the property as of the date of execution of the real estate purchase contract which would have been disclosed by a disclosure in compliance with this chapter and of which the purchaser was not aware at the time of settlement if by sale of the property, or occupancy by the purchaser if by lease with the option to purchase; or~~

2. In the event of a misrepresentation in any residential property disclosure statement or the failure to provide the disclosure ~~or disclaimer~~ required by this chapter, the contract may be terminated subject to the provisions of subsection B of § 55-520.

2.-3. In the event the owner fails to provide the disclosure required by § 55-519.1, or the owner misrepresents, willfully or otherwise, the information required in such disclosure, except as result of information provided by an officer or employee of the locality in which the property is located, the purchaser may maintain an action to recover his actual damages suffered as the result of such violation. Notwithstanding the provisions of this subdivision, no purchaser of residential real property located in a noise zone designated on the official zoning map of the locality as having a day-night average sound level of less than 65 decibels shall have a right to maintain an action for damages pursuant to this section.

C. Any action brought under this subsection shall be commenced within one year of the date the purchaser received the disclosure ~~or disclaimer~~ statement. If no disclosure ~~or disclaimer~~ statement was delivered to the purchaser, an action shall be commenced within one year of the date of settlement if by sale, or occupancy if by lease with an option to purchase.

Nothing contained herein shall prevent a purchaser from pursuing any remedies at law or equity otherwise available against an owner in the event of an owner's intentional or willful misrepresentation of the condition of the subject property.

§ 55-525. Real Estate Board to develop forms; when effective.

An owner shall be required to make disclosures ~~or a disclaimer~~ required by this chapter for real property subject to a real estate purchase contract which is fully executed by all parties thereto on and after July 1, ~~2007~~. ~~1993~~ On or before January 1, ~~2008~~, ~~1993~~, the Real Estate Board shall, by regulation, develop the form-s for the residential property ~~disclaimer statement and the residential property disclosure statement~~. ~~and shall provide at least one copy of each form to all licensees of the Board. Until such time as the form-s are developed by the Board, forms currently in use may continue to be used. After development of the initial forms,~~ The Board may, by regulation, at any time amend the forms as the Board deems necessary and appropriate.

~~Prior to July 1, 1993, at which time an owner of residential real property shall be required to provide a purchaser with disclosures required by this chapter, the parties may agree in writing (i) in the real estate purchase contract, (ii) in an addendum to the real estate purchase contract, or (iii) in a separate agreement, that the provisions of this chapter shall apply. Upon such agreement, the owner of residential real property shall provide the purchaser with a residential property disclaimer statement or a residential property disclosure statement. Such statement may be prepared by the owner, an attorney, or a real estate broker and shall comply with the provisions of this chapter.~~

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